IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 568 (SS) OF 2001

(Old No. 804/2000)

Vinod Kumar,
S/o late Ram Autar,
R/o B-Block Matkota Form,
Rudrapur, District-Udham Singh Nagar.

.....Petitioner.

Versus

1. Chief General Manager (Form), Govind Ballabh Pant Agriculture and Technology University, Pant Nagar, District-Udham Singh Nagar.
2. Deputy Controller (Form) Pant Nagar University Form Directorate, Haldi, District-Udham Singh Nagar.
3. Assistant Director (Agriculture Work) Western Circle, Matkota, Udham Singh Nagar. .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri S.K. Mandal, Advocate for the petitioner, Sri Rajendra Dobhal, Advocate for the respondents no. 1 and 2 and Standing Counsel for respondent no. 3.

By the present writ petition, the petitioner has prayed for a writ of Certiorari quashing the order dated 14.09.1999 passed by the respondent no. 3 (Annexure No. 7 to this writ petition). Further prayer has been made for a writ of mandamus commanding the respondents to permit the petitioner to join the duty on the post of Messenger and pay his salary as an when become due.

Briefly stated, according to the case of the petitioner, he was appointed on the Muster Roll as a daily wager on 04.05.1991 on the post of Agriculture Labourer in the Pant Nagar University Farm. He worked from 04.05.1991 to 15.08.1997 as a Messenger which is equivalent to the post of Agriculture Labour.

On 16.08.1997, on the festival of Raksha Bandhan, the petitioner went to his sister's house and while he was coming back to join duty on 18.08.1997, he was arrested by the police on suspicion in a crime. Pursuant to which, he was sent to Jail and remained there from 18.08.1997 to 17.01.1998, therefore, he could not join the duty on 18.08.1997.

Thereafter, in Criminal Case under Sections 392, 411, 467, 420, 469 I.P.C. in Case Crime No. 2047 of 1997, P.S. Bachhrawa, District Raibareilly, he was acquitted by the IInd Additional Chief Judicial Magistrate, Raibareilly on 17.01.1998.

After the acquittal, the petitioner approached the respondent no. 1 on 30.03.1998 with an application to permit him to resume his duties. The respondent no. 1 assured him to give permission to join the duties, but he did nothing till June, 1998, and on 08.06.1998, the petitioner sent a reminder to the respondent no. 1 enclosing the certificated issued by the District Judge regarding his acquittal in a criminal case.

In pursuance of the aforesaid reminder, the respondent no. 2 vide letter dated 19.06.1998 informed the petitioner that the date of issue of certificate of District Judge is 17.01.1997, which is not corroborating with the date 18.08.1997 showing the period of custody and he was directed to show cause.

In reply to show cause letter dated 19.06.1998, the petitioner supplied the copy of the order of IV Addl. Civil Judge, (Junior Division), Raibareilly dated 24.06.1999 and the

question answer issued by the Additional Chief Judicial Magistrate.

The grievance of the petitioner is that in spite of the submission of the necessary documents as required by the respondent no. 3 regarding his absence from duty, the respondent no. 3 issued an order on 14.09.199 to the petitioner refusing him to give joining to resume his duty on the ground that he has absented himself for more than 90 days

In ***Awadhesh Kumar Sharma Vs. Union of India and others 2000(2) A.W.C. 1073,*** it has been observed by the Allahabad High Court as under:-

> *"In our opinion when the petitioner was acquitted in the criminal case, it has to be deemed in law that in fact he was never involved in any criminal case. It is settled law that every statue ordinarily operates prospectively (unless expressly made retrospective) whereas every judgment of a court of law operates retrospectively (unless expressly made prospective). The only material against the petitioner was the criminal case in which he was acquitted. Since he has been selected, he must now be allowed to join duty."*

Petitioner has submitted that when he was absent from service on account of the fact that he was involved in the criminal case and therefore, he cannot be held guilty and he cannot be allowed to suffer after he was acquitted.

However, a writ of certiorari is issued quashing the order-dated 14.09.1999 passed by the respondent no. 3. Further a writ of mandamus is issued directing the respondent concerned to dispose of the representation dated 26.09.1999 of the petitioner and consider the case of the petitioner for his reinstatement in service within a period of two months from

the date of presentation of the certified copy of the order by passing appropriate order in accordance with law.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

10.08.2006
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